



LAST WILL & TESTAMENT

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DYING WITHOUT A WILL

If you die *intestate* (without a will), your state's laws of descent and distribution will determine who receives your property by default. These laws vary from state to state, but typically the distribution would first be to your spouse and, if your spouse is not living, to your children. If no spouse or children are living, the law designates other family members to receive your property. A state's plan often reflects the legislature's guess as to how most people would dispose of their estates and builds in protections for certain beneficiaries, particularly minor children. That plan may or may not reflect your actual wishes, and some of the built-in protections may not be necessary in a harmonious family setting. A will allows you to alter the state's default plan to suit your personal preferences.

DYING WITH A WILL

A will provides for the distribution of property owned by you at the time of your death in any manner you choose (subject to the forced heirship laws of some states that prevent disinheritance of a spouse and, in some cases, children). Your will, however, cannot govern the disposition of properties that pass outside your probate estate (such as certain joint property, life insurance, retirement plans and employee death benefits) unless they are payable to your estate.

Wills can be of various degrees of complexity and can be utilized to achieve a wide range of family and tax objectives. If a will provides for the outright distribution of assets, it is sometimes characterized as a **simple will**. If the will establishes one or more trusts, it is often called a **testamentary trust will**. Alternatively, the will may leave probate assets to a preexisting inter vivos trust (created in your lifetime), in which case it is called a **pour over will**. In either case, the purpose of the trust arrangement (as opposed to outright distribution) is to ensure continued property management and creditor protection for the surviving family members, to provide for charities, and to minimize taxes. Aside from providing for the intended disposition of your property to spouse, children etc., there are a number of other important objectives that may be accomplished in your will.

- (1) You may designate a guardian for your minor child or children if you have survived the other parent and, by judicious use of a trust and appointment of a trustee, eliminate the need for bonds and supervision by the court regarding the care of each minor child's estate.
- (2) You may designate an executor of your estate in your will and eliminate the need for a bond; in some states the designation of an independent executor will eliminate the need for court supervision of the settlement of your estate.
- (3) You may choose to acknowledge or otherwise provide for a child (e.g., stepchild, godchild, etc.) in whom you have an interest, an elderly parent, or other individuals.

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- (4) If you are acting as custodian for the assets of a child or grandchild under the Uniform Gift (or Transfers) to Minors Act, you may designate your successor custodian and avoid the expense of a court appointment.

LIMITATIONS

A will does not govern the transfer of certain types of assets, called non-probate property, which by operation of law or contract pass to someone else on your death. The most common non-probate assets are life insurance policies.

EXECUTION

Wills are signed in the presence of witnesses and certain formalities must be observed. A later amendment to a will is called a *codicil* and must be signed with the same formalities. In some states, the will may refer to a memorandum disposing of tangible personal property, such as furniture, jewelry, automobiles, etc., which may be changed from time to time without the formalities of a will. In many states, a will that is formally executed with the signatures notarized is deemed to be self proved and may be admitted to probate without testimony of witnesses or other additional proof.

For more information, or to make an appointment to get a will, call the base Legal Office at (781) 377-2361. Wills are scheduled by appointment only on Tuesdays from 9 to 11 a.m. and Thursdays from 1 to 3 p.m.

For further information on wills visit:

<http://www.abanet.org/rpte/public/home.html>; <http://www.hanscom.af.mil/news/story.asp?id=123069767>